IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14881 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHENDRA AMBALAL PATEL

Versus

ASSISTANT DIRECTOR OF INCOME TAX (INV) - UNIT - I(2)

Appearance:

1. Special Civil Application No. 14881 of 2003
MR PAVAN S GODIAWALA for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1
MR BB NAIK for Respondent No. 1
..... for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 11/12/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE A.R.DAVE)

The petitioner has been aggrieved by an authorization dated 28.8.2003 issued by respondent No. 2 under the provisions of sec. 132A(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') and also by an order dated 7.10.2003 passed by the Metropolitan Magistrate, Court No. 15, Ahmedabad, below C.R. No. 3263 of 2003, whereby an application submitted by the petitioner for return of the assets in question has been turned down by the said court. He has also prayed that the respondents be directed to release the cash and ornaments in favour of the petitioner which had been seized by the respondent authorities at the time of the raid.

2. The facts giving rise to the present petition, in a nutshell, are as under :

2.1 Information had been received by the Asst. Director of Income-tax (Inv.), Unit 1(2), Ahmedabad, that at a place named "Kalgi" at Ambawadi in Ahmedabad, some gambling activities in the nature of cricket betting had been going on and, therefore, the police had conducted a raid and had seized cash to the tune of Rs. 73,20,140/-, gold ornaments and certain documents, wherein names of the persons, who had given cash, were recorded. The police authorities had also detained some persons for the purpose of interrogation. In view of the aforesaid information received by the Asst. Director of Income-tax (Inv.), he had recorded statements of the persons from whom the aforestated cash and ornaments were found and ultimately an authorization had been issued under the provisions of sec. 132A of the Act by respondent No. 2 for taking possession of the cash, ornaments and the documents, which were in custody of the police. As the police authorities had already reported the facts with regard to the seizure of the aforestated assets and documents to the Metropolitan Magistrate, Court No. 15, an application was submitted to the said court for getting possession of the said assets and the documents from the police. After hearing the concerned parties, including the petitioner, by an order dated 7.10.2003, the Metropolitan Magistrate, Court No. 15, Ahmedabad, passed an order for giving possession of the said cash, ornaments and documents to the respondent authorities. It is pertinent to

note that when the said application was placed before the Metropolitan Magistrate, Court No. 15, the petitioner had also filed his objection to the effect that the said assets and documents should not be handed over to the Income-tax authorities but they should be given to the petitioner. The objection raised by the petitioner had been turned down by the impugned order dated 7.10.2003.

3. The petitioner has approached this court with a prayer that the said order passed by the Metropolitan Magistrate, Court No. 15, Ahmedabad, be quashed and set aside and the respondent authorities be directed to hand over the assets and documents, which were obtained by the said authorities in pursuance of the impugned order as the petitioner is the owner of the said assets and the documents.

4. Learned advocate Shri Mihir Joshi appearing for the petitioner has submitted that the petitioner is the owner of the premises named "Kalgi", which had been raided by the police authorities. It is the case of the petitioner that at the time of the raid, some employees of the petitioner were present and their statements had been recorded by the police authorities. The said persons had stated that they were employees of the petitioner and the cash and ornaments had been duly recorded in the books of accounts of the petitioner. It is also his case that though the respondent authorities knew that the premises named 'Kalgi' was owned by the petitioner, no authorization in respect of the petitioner had been issued, but the authorization had been issued only in respect of other persons, who were employees of the petitioner. He has, therefore, submitted that the authorization has been issued with some oblique motive so as to retain possession of the assets belonging to the petitioner. Thus, according to the learned advocate, the said authorization is bad in law.

5. It has been also submitted by him that as the cash and ornaments were in custody of the court, the same could not have been requisitioned under the provisions of sec. 132A of the Act because the authorization can be issued only in respect of a person or an authority and the court is neither a person nor an authority and, therefore, also the said authorization is bad in law.

6. Learned advocate Shri Joshi has relied upon a judgment delivered by the Hon'ble Supreme Court in the case of CIT v. Vindhya Metal Corporation and ors.,

224 ITR 614 so as to substantiate his arguments that as the petitioner is the owner of the assets in question, which were shown in his income tax return as well as in his books of accounts, the information to the effect that the cash and ornaments were undisclosed property was not correct and, therefore, the satisfaction arrived at by respondent No. 2 was not proper and therefore the authorization is bad in law.

7. Thereafter, the learned advocate has relied upon the judgment delivered in the case of Ajit Jain v. Union of India and ors. 242 ITR 302 to show that when the information received by the authority is a mere rumour or a gossip or a hunch, and if the authorization is issued on incorrect or vague information, the authorization is bad in law. According to him, even if the cash and ornaments were in possession of somebody, it cannot be presumed that the said assets were undisclosed property and it would be improper to draw such a conclusion in view of the law laid down in the case of Ajit Jain (supra).

8. Learned advocate Shri Mihir Joshi has further submitted that the cash and ornaments, which were in custody of the court, could not have been requisitioned under the provisions of sec. 132A of the Act. It has been submitted by him that as per the law laid down in the case of Abdul Khader v. Sub-Inspector of Police and ors., 240 ITR 489, it was not open to the authorities to issue any authorization for requisitioning the assets, which were in custody of the court. He has submitted that the learned Metropolitan Magistrate did not look into the relevant facts and committed an error by directing the police authorities to hand over the cash and ornaments as well as the documents to the respondent income-tax authorities.

9. On the other hand, learned Sr. Standing Counsel Shri M.R. Bhatt appearing for the respondent authorities has submitted that respondent No. 2 was having sufficient information in his possession to believe that the cash and ornaments seized were undisclosed property and, therefore, upon going through the relevant record, he had issued the authorization. He has shown the original record including the Satisfaction Note to this court so as to satisfy the court about the satisfaction, which respondent No. 2 had arrived at, before issuance of the authorization.

10. It has been mainly submitted by the learned Sr. Standing Counsel that when the information with regard to the police raid had been received, a responsible officer of the respondent department had recorded statements of the persons from whose possession the cash and ornaments were found. Respondent No. 2 did not think it proper to rely on the information gathered by the police or reports of the newspapers, but so as to have correct information, he had relied upon the information gathered by a responsible officer in the cadre of Asst. Director of Income-tax (Inv.). One Shri Tarunkumar D. Karia was arrested by the police at the time when the raid had been carried out and therefore the statement of Shri Tarunkumar Karia had been recorded by the Asst. Director of Income-tax (Inv.). Shri Tarunkumar Karia had not named Shri Mahendra Patel, the present petitioner, as the owner of 'Kalgi' or the cash and ornaments, which had been seized by the police, but he had stated that the said cash and ornaments belonged to Shri Dinesh B. Thakkar, his employer and the cash as well as the assets had not been accounted for in the books of accounts of his employer. As the said information was gathered from the person, who was found in possession of the cash and ornaments, respondent No. 2 thought it proper to issue an authorization in respect of Shri Dinesh Babulal Thakkar, who was named as the employer and the owner of the said undisclosed cash, ornaments and "Kalgi", the place from where the said cash and ornaments had been found by the police authorities. As name of the present petitioner did not figure in any statement, which had been recorded by the ADIT (Inv.), on whose report respondent No. 2 had relied upon, no authorization in respect of the petitioner had been issued by respondent No. 2.

11. It has been further submitted by him that the authorization had not been issued in respect of the court as alleged by the petitioner. It has been submitted that an application had been made by the respondent authorities to the concerned Court for getting possession of the cash, ornaments and the documents, which had been seized by the police and, therefore, it cannot be said that the authorization had been issued against the court, as alleged by the petitioner.

12. It has been further submitted by him that as the authorization has not been issued in name of the

petitioner, the petitioner has no right to challenge the said authorization, more particularly when the persons named in the authorization have not come forward for challenging the validity of the authorization.

13. It has been also submitted by Sr. Standing Counsel Shri Bhatt that the petitioner's averment that the cash and ornaments were duly reflected in the books of accounts of the petitioner as well as in the income tax return filed for the A.Y. 2003-2004, was not correct for the reason that neither the petitioner, nor his wife, had attached balance sheet alongwith their income tax returns for the aforestated assessment year. Moreover, the petitioner had also not filed his wealth tax return for the assessment years 2002-2003 or 2003-04.

14. It has been also submitted by the learned Sr. Standing Counsel that if the petitioner claims to be the owner of the cash and ornaments, which are in possession of the respondent authorities, proper course for the petitioner would be to submit an application under the provisions of sec.132B of the Act so that, upon verifying the correctness of the statement made and the evidence which might be adduced by the petitioner, the respondent authorities can take appropriate action.

15. For the reasons stated hereinabove, the learned Sr. Standing Counsel has submitted that the petition deserves to be rejected.

16. We have heard the learned advocates and have also perused the satisfaction note, which was produced before this court by the respondent authorities. We have also gone through the judgments cited by the learned advocates.

17. Upon perusal of the satisfaction note, it is very clear that respondent No. 2 had looked into all the statements made by the persons, who were found at the time when the police had raided the premises and had seized the cash, ornaments and the documents. A responsible officer in the cadre of Asst. Director of Income-tax (Inv.) had recorded the statements of the persons, who were found to be in possession of the cash, ornaments and other documents at the time of the raid. The authorization had been issued on the basis of the information gathered by the Asst. Director of Income-tax (Inv.). We also find that respondent No.

2 did not rely upon any newspaper report or any statement made before the police as it would not have any evidential value.

18. In our opinion, respondent No 2 had rightly preferred to rely upon a piece of information, which his responsible officer had gathered rather than to rely upon the press reports, veracity whereof is at times doubtful. We also think that respondent No. 2 was justified in not relying upon the statements recorded by the police because such statements do not have any importance in the eyes of law as it has no evidential value.

19. Thus, we do not agree with the contention raised by the learned advocate appearing for the petitioner that without having sufficient information, respondent No. 2 had issued the authorization.

20. As name of the petitioner never figured in any information gathered by respondent No. 2, respondent No. 2 rightly did not issue any authorization in respect of the petitioner and he issued the authorization only in respect of the persons from whom the cash and ornaments were found and in respect of the person, who was named as the owner of the said undisclosed property.

21. It is pertinent to note that Shri Tarunkumar Karia, who was found to be in possession of the cash, ornaments and the documents had stated before the Asst. Director of Income-tax (Inv.) that Shri Dinesh Babulal Thakkar was his employer, who was the owner of the cash, ornaments and the documents and the said cash and ornaments had not been recorded in the books of accounts and they were received in relation to gambling activity of cricket betting. We, therefore, do not see any mistake or illegality committed by respondent No. 2 in not issuing the authorization in the name of the petitioner, whose name did not figure anywhere in the statements made by different persons before the Asst. Director of Income-tax (Inv.).

22. The averment of the learned advocate for the petitioner that the authorization had been issued in respect of the court is not correct because upon perusal of the record it is clear that the possession of the undisclosed property was with the police authorities, but as the police authorities had given intimation with regard to the raid and seizure of the cash and ornaments to the court, the respondent

authorities thought it proper to submit an application before the concerned court for getting possession of the said assets. It is also pertinent to note that the Metropolitan Magistrate, Court No. 15, had also considered the objections filed by the petitioner, when an application for getting possession of the cash and ornaments had been submitted by the respondent authorities. Only after considering the submissions made by the respondent authorities and the petitioner, the impugned order dated 7.10.2003 had been passed by the Metropolitan Magistrate Court No. 15, Ahmedabad. We, therefore, do not find any illegality in the impugned order.

23. In our opinion, the petition is not maintainable for the reason that disputed questions of fact are involved in the petition with regard to ownership of the assets in question. This Court would not like to decide whether the petitioner is in fact the owner of the assets in question or Shri Dinesh Thakkar is the owner. Moreover, the petitioner has an equally efficacious alternative remedy available to him because if the petitioner claims to be the owner of the seized cash and ornaments, which are in custody of the respondent authorities, the proper course open to the petitioner is to submit an application to the concerned authority under the provisions of sec. 132B of the Act as submitted by learned Sr. Standing Counsel Shri M.R. Bhatt for the respondents. If such an application is filed alongwith necessary evidence to show that the petitioner is the owner of the said cash and ornaments, which are not undisclosed properties or which have been duly recorded in his books of accounts, we are sure that the petitioner would surely be given the said assets after due scrutiny by the concerned authorities and in accordance with law.

24. For the reasons stated hereinabove, we do not find any substance in the petition and, therefore, the petition is rejected. Notice is discharged with no order as to costs.

(A.R. DAVE, J.)

(K.A. PUJ, J.)

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